

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as U.S. Express Mail, Airbill No. EV690683735US, in an envelope addressed to: MS Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: July 27, 2006

Signature:



Docket No.: 38-58(13696)B
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Kenneth A. Barton

Application No.: 07/827,906

Confirmation No.: 3375

Filed: January 30, 1992

Art Unit: 1638

For: IMPROVED EXPRESSION OF GENES IN
PLANTS

Examiner: Kubelik, A.

**TRANSMITTAL OF PETITION TO REVIVE
UNINTENTIONALLY ABANDONED APPLICATION**

Submitted herewith is a petition to revive the above-identified patent application, together with petition fee, amendment to introduce new claims; and terminal disclaimer with fee.

The Applicants confirm that the entire period of abandonment was unintentional.

This petition is filed **within three months** of the issuance of a Notice of Abandonment on May 8, 2006.

The Notice of Abandonment states that the application went abandoned following an adverse decision by the Board of Patent Appeals and Interferences rendered on January 29, 2004 and because the period for seeking court review of the decision has expired. The Applicants wish to remind the Patent Office that, following the Board decision, the interference did indeed continue in a court proceeding (i.e., an action under 35 USC 146). A final settlement between the parties of interest was not executed until January 17, 2006, **less than twelve months ago**, and was not filed with the Patent Office until February 3, 2006.

Section 711.03(c) of the M.P.E.P. suggests that further supporting information is unnecessary insofar as this petition is filed within three months of the date of the notice of abandonment and within one year of the date by which the application apparently went abandoned, unintentionally, through apparent operation of Patent Office procedure for the treatment of applications post-interference.

The MPEP states that a petition to revive requires that a reply be filed. "Generally, the required reply is the reply sufficient to have avoided abandonment, had such reply been



timely filed." In the case of the present application, an amendment to introduce non-interfering claims, filed prior to abandonment, would have avoided abandonment because the case would properly have been sent to the examiner for *ex parte* prosecution. Thus, the amendment filed herewith constitutes the reply required for granting of the petition. The amendment filed herewith includes claims that were not in the interference, and the Applicants request that the application be returned to *ex parte* prosecution for consideration of these claims.

Dated: July 27, 2006

Respectfully submitted,

By 

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PTO/SB/64 (10-05)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)
38-58(13696)B

First named inventor: Barton, Kenneth A.

Application No: 07/827,906-Conf. #3375

Art Unit: 1638

Filed: January 30, 1992

Examiner: Kubelik, Anne R.

Title: IMPROVED EXPRESSION OF GENES IN PLANTS

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (571) 272-3282.The above-identified application became abandoned for failure to file a timely and proper reply to a notice or
action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration
date of the period set for reply in the office notice or action plus any extensions of time actually obtained.**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee☐ Small entity – fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status.
See 37 CFR 1.27.☒ Other than small entity – fee \$ 1,500.00 (37 CFR 1.17(m))**2. Reply and/or fee**A. The reply and/or fee to the above-noted Office action in
the form of Amendment (identify type of reply):☐ has been filed previously on _____☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____

☐ has been paid previously on 08/01/2006 TBESHAH1 00000031 134125 07827906☐ is enclosed herewith. 01 FC:1453 1500.00 DA

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

- ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☒ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ 130.00 for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.


Signature

July 27, 2006

Date

Timothy K. Ball

Typed or printed name

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Registration Number, if applicable

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Enclosures: ☒ Fee Payment☒ Reply☒ Terminal Disclaimer Form☐ Additional sheets containing statements establishing unintentional delay☒ Other: Transmittal letter

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